

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
TACOMA DIVISION**

BEAMING WHITE LLC, a Delaware limited liability company, and LUIS LAJOUS, an individual,

**Plaintiff(s).**

V.

JASON RABON, an individual, and JANE  
DOE RABON, an individual, and the  
marital estate of JASON and JANE DOE  
RABON.

Defendant(s).

No. 3:16-cv-05858

## COMPLAINT

For Trademark Infringement, Unfair Competition, Consumer Protection Act Violations, Copyright Infringement, and Equitable Relief

## TRIAL BY JURY DEMANDED

COMES NOW Plaintiffs, BEAMING WHITE LLC and LUIS LAJOUS, and by this Complaint seeks money damages and equitable relief against Defendants JASON RABON, for trademark infringement, unfair competition in violation of Section 43(a) of the Lanham Act, common law infringement and unfair competition, violation of the Consumer Protection Act, and copyright infringement, and alleges as follows:

## JURISDICTION AND VENUE

1. This Court has Federal Question subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338 and 15 U.S.C. § 1121 as an action arising under the laws of the United States, including Lanham Action sections 15 U.S.C. §§ 1111, 1114, 1116,

## 1— COMPLAINT

3:16-cv-05858

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1117, and 1125, and under the Copyright Act of 1976, as amended, 17 U.S.C. §§ 101 *et seq.*

2. This Court has pendent jurisdiction over the state claims under 28 U.S.C. § 1338(b) in that said claims are joined with substantial and related claims under the Trademark Laws of the United States, 15 U.S.C. §§ 1051, *et seq.* and the Copyright Laws of the United States, Title 17 United States Code. This Court also has supplemental jurisdiction pursuant to 28 U.S.C. § 1337. Pursuant to Rule 9(c), Plaintiffs plead that all acts and conditions precedent for establishing jurisdiction have been performed or have occurred.

3.       Venue and personal jurisdiction are proper in this district pursuant to 28 U.S.C. § 1400, 28 U.S.C. § 1391(b) and (c), and, pursuant to FRCP 4 and Washington's long arm jurisdictional rules RCW 4.28.185, in that Plaintiffs are informed and believes and on that basis alleges that

4. Defendants reside in this district and/or can be found in this district by virtue of their activities, are engaged in substantial and not isolated activities in this district, and engaged in acts in this district and/or injured persons in this district in conjunction with activities carried on within this district by Defendants and/or in the ordinary course of trade of Defendants, and that claims substantially arose in this jurisdiction as a result of acts committed by Defendants within and/or directed to this judicial district in the course of Defendants doing business in this district.

5. In addition, venue and personal jurisdiction are proper in this district in that, at least Defendants have purposefully conducted business with persons and entities in this judicial district, have made sales and shipped product in and to entities in this judicial district, maintained an office in this judicial district, all of which relate to and/or give rise to the claims in this suit, and that many or most of the acts, allegations, and intellectual property which

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3 give rise to the claims herein, or to which the claims are substantially related, occurred in  
4 and/or are located in this district.

5 **PARTIES**

6. Plaintiff BEAMING WHITE LLC is now, and at all times mentioned in this  
7 Complaint was, a Delaware limited liability company licensed to do business in the State of  
8 Washington, with its principal place of business Vancouver, Washington and having website  
9 located at <http://www.beamingwhite.com/>.

10 7. Plaintiff LUIS LAJOUS is a resident of the State of Washington. He is the  
11 founder, owner and President of BEAMING WHITE LLC. BEAMING WHITE LLC has the  
12 exclusive license to use the trademarks in this suit in commerce, and the right to sue for  
13 trademark infringement and/or unfair competition related to such marks, and to have  
14 LAJOUS, at LAJOUS' election, join in such suit.

16 8. Plaintiffs are informed and believes and on that basis alleges that Defendant  
17 JASON RABON is now, and at all times mentioned in this Complaint was, an individual  
18 having a business presence and conducting substantial and continuous transactions with the  
19 State of Washington, and that the infringing acts giving rise to the claims in this Complaint  
20 directly touch and concern the residents of the State of Washington..

21 9. Plaintiffs are informed and believes and on that basis alleges that JANE DOE  
22 RABON is the wife of Defendant JASON RABON, that she aided and abetted JASON  
23 RABON in the acts and violations alleged herein such that JASON RABON's act and  
24 violations should be attributed to JANE DOE RABON, and that some or all of the unlawfully  
25 gained benefits were intended as and/or were for the benefit of their marital estate. JANE  
26 DOE RABON is a fictitious name until the actual name of Defendant's wife is known.

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3 **COMMON ALLEGATIONS OF FACT**

4 10. Plaintiffs conduct a business manufacturing and selling teeth whitening  
 5 products. They have gained a substantial market share, including on Groupon of which they  
 6 maintain a substantial share. Plaintiffs have over a period of time developed substantial  
 7 recognition and goodwill for their products, identified with the valuable and recognized  
 8 trademarks PREMIUM HOME WHITENING SYSTEM®, BEAMING WHITE®, and  
 9 FOREVER WHITE™ (collectively “the Beaming White Marks”).

10 11. As part of their business operations, Plaintiffs use the Beaming White Marks.  
 11 In recognition of the inherently distinctive nature of the PREMIUM HOME WHITENING  
 12 SYSTEM®, BEAMING WHITE® marks, the United States Patent & Trademark Office has  
 13 registered the mark PREMIUM HOME WHITENING SYSTEM® on the Principal Register  
 14 on March 27, 2012, Registration No. 4,118,006 in International Class 003 for Cosmetic  
 15 preparations for the care of mouth and teeth; Dental bleaching gel; Teeth whitening kit; Tooth  
 16 bleaching preparations, *see Exhibit A hereto*, incorporated herein by reference; Tooth gel;  
 17 Tooth whitening gels; Tooth whitening preparations, BEAMING WHITE® on the Principal  
 18 Register on September 28, 2010, Registration No. 3,853,540 in International Class 003 for  
 19 Cosmetic preparations for the care of mouth and teeth; Dental bleaching gel; Teeth whitening  
 20 kit; Tooth bleaching preparations; Tooth gel; Tooth whitening gels; Tooth whitening  
 21 preparations, *see Exhibit B hereto*, incorporated herein by reference; and BEAMING  
 22 WHITE®, on the Principal Register on September 28, 2010, Registration No. 3,853,130 in  
 23 International Class 003 for Cosmetic preparations for the care of mouth and teeth; Dental  
 24 bleaching gel; Teeth whitening kit; Tooth bleaching preparations; Tooth gel; Tooth whitening  
 25 gels; Tooth whitening preparations, International Class 010 for Dental apparatus, namely,  
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3 intra-oral light systems; Intra-oral dental light system, and International Class 044 for Teeth  
4 whitening services, *see Exhibit C hereto*, incorporated herein by reference (hereinafter  
5 collectively referred to as the “Beaming White Marks” and the “teeth whitening products”).

6 12. BEAMING WHITE® Registration No. 3,853,540 and BEAMING WHITE®  
7 Registration No. 3,853,130 are incontestable under Lanham Act Section 15, 15 U.S.C. §1065.

8 13. Plaintiffs manufacture and sell teeth whitening products. Plaintiffs and their  
9 predecessors in interest have sold teeth whitening products under the distinctive Beaming  
10 White Marks since at least as early as 2008.

11 14. Plaintiffs identify their product lines using the distinctive Beaming White  
12 Marks. Plaintiffs’ Beaming White Marks are inherently distinctive and/or has acquired  
13 secondary meaning in conjunction with the sale and marketing of teeth whitening products.  
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15 15. In addition to using BEAMING WHITE® as a mark for goods sold in  
16 commerce, Plaintiffs use the mark as a trade name, Beaming White LLC to identify their  
17 business in selling teeth whitening products. Beaming White LLC is Plaintiffs’ registered  
18 business name in Washington.

19 16. Plaintiffs have developed significant goodwill and reputation and derive  
20 significant value from use of the Beaming White Marks to identify their products and  
21 business.

22 17. Plaintiffs are the exclusive owners of the registered, statutory and common  
23 law trademark rights in the Beaming White Marks in the teeth whitening products market.  
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25 18. Plaintiffs have expended substantial time and resources to promote their  
26 reputation and develop goodwill in their Beaming White Marks, including marketing,  
27 advertising, and website development.

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3 19. Plaintiffs market and sell their products under the Beaming White Marks  
4 throughout the United States and internationally. Plaintiffs market and sell directly to  
5 purchasing consumers, as well as through distributors.

6 20. The market for teeth whitening products is extremely competitive, and a  
7 manufacturer's reputation for reliable quality is critical to success.

8 21. Plaintiffs are informed and believe and on that basis allege that Defendants'  
9 use of Plaintiffs' Beaming White Marks is likely to confuse consumers searching for  
10 Plaintiffs' products on the Internet.

11 22. Plaintiffs are informed and believe and on that basis allege that Defendants'  
12 use of the Beaming White Marks is confusingly similar to and likely to be confused with  
13 Plaintiffs' Beaming White Marks. Defendants have used the Beaming White Marks to market  
14 and sell goods and services which are substantially similar to those marketed by Plaintiffs  
15 using some and/or all of Plaintiffs' Beaming White Marks, in the same geographic area, since  
16 on or before 2015 and continuing to the present. Specifically, Defendants have used and  
17 continue to use Plaintiffs' Beaming White Marks to market and sell teeth whitening products.

19 23. Plaintiffs are informed and believe and on that basis allege that Plaintiffs'  
20 goods and services and Defendants' goods and services are likely to be sold to, and or sought  
21 by, the same or similar customers, thus increasing the likelihood of confusion.

22 24. Plaintiffs compete against Defendants in the marketplace, and specifically in  
23 the market for teeth whitening products.

25 25. Plaintiffs are informed and believe and on that basis allege that Defendants'  
26 use of the confusingly similar name for the same product categories as those covered by  
27 Plaintiffs' Beaming White Marks is likely to confuse customers, and has confused customers,

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3 into believing that Defendants is/are the Plaintiffs and/or that Defendants' products are the  
4 products of Plaintiffs and or are sponsored by, affiliated with, or associated with Plaintiff;  
5 that Defendants' confusingly similar name is so similar in appearance to Plaintiffs' Beaming  
6 White Marks, particularly when used in conjunction with the sale of teeth whitening products,  
7 that its use is likely to cause confusion among or cause mistake by or deceive ordinary  
8 purchasers of Plaintiffs' product as to the affiliation, attribution, connection, association, of  
9 Defendants or Defendants' product with Plaintiffs or Plaintiffs' product, and/or as to the  
10 sponsorship and approval of Defendants' goods and activities by Plaintiff, and/or as to the  
11 source of Defendants' product, and Plaintiffs was damaged and is likely to continue to be  
12 damaged by the actions of Defendant.  
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14 26. Defendants' use of Plaintiffs' Beaming White Marks was and is without the  
15 consent of Plaintiffs.

16 27. Plaintiffs are informed and believe and on that basis allege that Defendants  
17 have knowledge of Plaintiffs' company, marks and website.

18 28. Plaintiffs sent a cease and desist letter to Defendant, demanding that they  
19 cease and desist from the infringing use.

20 29. Plaintiffs are informed and believe and on that basis allege that Defendants'  
21 infringing use was willful and knowing.

22 30. Defendants' ongoing infringing activities caused, and on information and  
23 belief will continue to cause, irreparable harm to Plaintiffs, which cannot be fully  
24 compensated by money damages.

25 31. Plaintiffs are informed and believe and on that basis allege that Defendants  
26 continuing infringing actions will cause Plaintiffs to suffer harm, including confusion by  
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3 consumers in the market, dilution by reduction of the distinctiveness of their famous mark  
4 and associated goodwill, and dilution by tarnishment of their famous mark and associated  
5 goodwill.

6 32. The public has an overriding interest in avoiding confusion of trade names and  
7 marks and in the enforcement of trademark laws.

8 33. Plaintiffs are informed and believe and on that basis allege that Defendants  
9 used and uses names and terms substantially similar to and likely to be confused with  
10 Plaintiffs' Beaming White Marks in the same geographic area since on or about 2015, for the  
11 purpose of marketing teeth whitening products directly competing with the teeth whitening  
12 products of Plaintiffs.

13 34. Plaintiffs are informed and believe and on that basis allege that Defendants'  
14 use of the Beaming White Marks for the same products in the same geographic areas as those  
15 covered by Plaintiffs' Beaming White Marks is likely to confuse customers, and has confused  
16 customers, into believing that Defendants are the Plaintiffs and/or that Defendants' products  
17 are the products of Plaintiffs and/or are sponsored by, affiliated with, or associated with  
18 Plaintiff; that Defendants' use of the Beaming White Marks is so similar in appearance,  
19 sound, and meaning to Plaintiffs' Beaming White Marks , particularly when used in  
20 conjunction with the sale of teeth whitening products, that its use is likely to cause confusion  
21 among or cause mistake by or deceive ordinary purchasers of Plaintiffs' products as to the  
22 source, affiliation, attribution connection, and/or association of Defendants or Defendants'  
23 products with Plaintiffs or Plaintiffs' products; that Defendants' offending use of the  
24 Beaming White Marks, is so similar in appearance, sound, and meaning to Plaintiffs'  
25 Beaming White Marks, particularly when used in conjunction with the sale of teeth whitening  
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3 products, that his use is likely to cause confusion among or cause mistake by or deceive  
4 ordinary purchasers of Plaintiffs' parts as to the sponsorship and approval of Defendants'  
5 parts and activities by Plaintiff, and Plaintiffs was damaged and is likely to continue to be  
6 damaged by Defendants' acts.

7 35. Plaintiffs also maintains a valuable database of copyrighted images by which  
8 it uses to market, identify and advertise its products, including on Groupon.

9 36. Plaintiffs are informed and believes and on that basis alleges that Groupon  
10 (www.groupon.com) is a global e-commerce store that markets to customers by e-mail and  
11 on the Groupon website itself; that Groupon connects millions of subscribers with local  
12 merchants by offering activities, travel, goods and services in more than 28 countries; that by  
13 the end of March 2015, Groupon served more than 500 cities worldwide, nearly 48.1 million  
14 active customers and featured more than 425,000 active deals globally; that unlike classified  
15 advertising, the merchant does not pay any upfront cost to participate: Consumers are able to  
16 search and browse deals via web or mobile and can subscribe to receive emails featuring  
17 deals they are interested in based on preferences they input.

19 37. Defendant JASON RABON was customer of Plaintiffs that used to buy as  
20 much as \$100,000 a month of Plaintiffs' branded products. Plaintiffs are informed that  
21 JASON RABON stopped buying two of Plaintiffs' branded products, but nevertheless  
22 continued advertising them on Groupon, via emails and on his websites, but when people  
23 would order them, he would send them a completely different product that he got from  
24 another supplier. Plaintiffs are informed that JASON RABON has been doing this for about  
25 21 months. Plaintiffs believe based on estimation that sales from the false advertisement of  
26 Plaintiffs' products have generated Defendants close to \$3MM in revenue.

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3 38. Defendants have been a customer of Beaming White's since around January  
4 2010. At first he purchased mostly Beaming White's Advanced Kit, which is used to provide  
5 a teeth whitening service to a customer, and a small quantity of BW-branded home whitening  
6 products such as teeth whitening pens and home whitening kits. Defendants had 2 or 3  
7 physical locations in the Charlotte area. Defendants started running deals on Groupon for  
8 Defendants' locations offering teeth whitening services very cheaply, selling thousands of  
9 treatments per month. Defendants received preferential pricing because Defendants bought  
10 such large volumes of kits.

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12 39. In May 2013, Defendants started ordering larger quantities of home whitening  
13 kits, presumably for Groupon. Defendants orders grew consistently and rapidly till he reached  
14 a peak of over 10,000/month in March 2014 for Plaintiffs' base home whitening kit, which  
15 is the one with the PREMIUM HOME WHITENING SYSTEM® trademark. Defendants  
16 originally paid around \$9.50/kit, and the price dropped to \$8 when Defendants' purchases  
17 got significantly larger. Plaintiffs started selling kits on Groupon at around the same time,  
18 and Plaintiffs were selling roughly the same number of kits as Defendants. On November  
19 2014, Defendants purchases of our FOREVER WHITE™ teeth whitening pen increased  
20 substantially from Defendants previous monthly purchases of these pens, and in January of  
21 2015 they went to almost 2,000 per month.

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23 40. In January 2016 Plaintiffs had an across the board product price increase, and  
24 Plaintiffs informed Defendants that the \$2/pen price was increasing to \$2.50. Soon thereafter  
25 Defendants stopped buying pens from Plaintiffs.

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27 41. Nevertheless, Defendants continued to use Plaintiffs' copyrighted images on  
28 Groupon local deals despite shipping a different product from a different supplier—clear

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false advertising and bait and switch advertising. Defendants were advertising Plaintiffs  
products on Groupon, but bought cheaper products to ship to the unsuspecting customer who  
did not get the product that Defendants advertised.

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42. Plaintiffs are informed and believes and on that basis alleges that Defendants  
maintain two websites [www.dazzlingwhitesmileusa.com](http://www.dazzlingwhitesmileusa.com) and [www.whitenmysmilenow.com](http://www.whitenmysmilenow.com),  
where Defendants willfully continue to infringe use of Plaintiffs copyrighted images.  
Plaintiffs further are informed and believes and on that basis alleges that on the website of  
the shopping mall in which Defendants maintain a teeth whitening kiosk, Defendants list the  
kiosk as Beaming White, willfully infringing the Beaming White Marks. Further, Defendants  
have the image of Plaintiffs biggest competitor in clear association with Plaintiffs' marks.

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43. Plaintiffs informed and believed based on the acts and allegations alleged  
herein and/or directly flowing or a natural consequence of the acts and allegations alleged  
herein, that Defendants infringing and violative acts were willful and malicious, and willfully  
and malicious caused injury to Plaintiffs.

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44. Plaintiffs is further informed and believes that Defendants' offices are listed  
as Beaming white with the BBB a number of cities; that if someone complains of Defendants  
acts or products, those acts because of Defendants willful and malicious use of Plaintiffs'  
Beaming White Marks, and images, will be associated with Plaintiff, harming Plaintiffs  
reputation, goodwill and business. Plaintiffs are informed and believe and on that basis allege  
that the addresses associated with those BBB listings for Beaming White are actually  
Defendants business addresses.

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45. Plaintiffs are informed and believes that Defendants maintain an office in  
Washington; and that he listed those offices on one of his websites until very recently.

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3 46. Plaintiffs are informed and believes and based thereon estimates that based on  
4 Defendants' reduction in purchase from Plaintiff, Plaintiffs' damages for Defendants  
5 infringing actions are over \$1.2MM.

6 47. On September 21, 2016 corporate counsel Randy Gross for Plaintiffs sent a  
7 cease and desist demand to Defendant demanding that Defendant cease using the Beaming  
8 White intellectual property, including the Beaming White Marks and the Beaming White  
9 copyrighted images (collectively, "the Beaming White Intellectual Property"). *See Exhibit*  
10 **D**, Letter dated September 21, 2016 from R.Gross, attached hereto and incorporated herein  
11 by this reference.

12 48. Plaintiffs are informed and believe and on that basis allege Defendants used  
13 Beaming White Intellectual Property on Defendants website, in direct e-mail marketing  
14 materials, on the Groupon website, and in mall kiosks

16 49. On or about September 27, 2016, counsel for Plaintiff, Randall Gross of  
17 Corporate Counsel, spoke with counsel for Defendant, Shaun Curry, stating, in summary,  
18 that Defendant knew he was going to have to pay as a result of his violations—it was just a  
19 matter of whether he paid now (via mutually agreed settlement), or later (via judgment); and  
20 that Defendant Mr. Rabon was in the process of compiling records to document his sales of  
21 teeth whitening products (primarily through Groupon sales). The idea is that this would help  
22 establish damages to Beaming White.

23 50. Plaintiffs are entitled to compensation to the extent possible for damages,  
24 actual and/or statutory, general and special, consequential, and incidental, in an amount to be  
25 proven at trial, for the harm caused by Defendant, and for attorneys' fees, costs, and pre- and  
26 post-judgment interest.

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3 51. Plaintiffs have suffered and likely will suffer immediate irreparable damage  
4 and ongoing harm by reasons of Defendants' unlawful acts unless Defendants are restrained  
5 and enjoined, and Plaintiffs are without adequate remedy at law.

6 52. Defendants' unlawful activities caused, and likely will continue to cause,  
7 irreparable harm to Plaintiff, which cannot be fully compensated by money damages.

8 53. The public has an overriding interest in avoiding unlawful copying of  
9 copyrighted images, false advertising and bait-and-switch advertising, and in the enforcement  
10 of copyright and trademark laws.

11 54. Accordingly, Plaintiffs demand an amount of money damages to compensate  
12 the Plaintiffs for the harm caused, including but not limited to Defendants' profits, actual  
13 and/or statutory damages, and/or punitive damages, as well as equitable relief, attorneys'  
14 fees, costs (including expert witness fees and costs), and interest.

16 **CLAIMS FOR RELIEF**

17 **Count 1: Trademark Infringement of PREMIUM HOME WHITENING SYSTEM®**

18 55. Plaintiffs re-allege every paragraph in this Complaint.

19 56. Plaintiffs exclusively own all rights to the PREMIUM HOME WHITENING  
20 SYSTEM® and the goodwill associated therewith for teeth whitening products.

21 57. Plaintiffs use PREMIUM HOME WHITENING SYSTEM® to identify  
22 Plaintiffs' goods and services in commerce. Plaintiffs derive substantial value, goodwill, and  
23 business reputation from the exclusive use by Plaintiffs of PREMIUM HOME WHITENING  
24 SYSTEM®. Because of Plaintiffs' exclusive use of its registered mark and the goodwill and  
25 reputation associated with Plaintiffs goods, Plaintiffs' mark has developed significance in the  
26 minds of the public as an identifier of the source and quality of Plaintiffs' goods and services.

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3 58. PREMIUM HOME WHITENING SYSTEM® is distinctive and/or famous in  
4 that among the teeth whitening products community, it has acquired distinctiveness; the use  
5 of the Mark in connection with teeth whitening products has endured over time; Plaintiffs  
6 have used the Mark for its goods and services in the relevant marketplace; and that there is  
7 significant recognition by consumers in the relevant marketplace of Plaintiffs' Mark.

8 59. Plaintiffs are informed and believe and on that basis allege that Defendants  
9 willfully and maliciously infringed and misappropriated Plaintiffs' trademark in commerce  
10 without permission, directly damaging Plaintiffs reputation and business by knowingly and  
11 maliciously using Plaintiffs' mark in the sale of competing goods, passing Defendants goods  
12 off as Plaintiffs' goods, and diverting sales from Plaintiffs; that Defendants' infringing uses  
13 of Plaintiffs' mark are likely to and/or have caused actual confusion with consumers as to the  
14 source of goods and affiliation of Defendants to Plaintiffs; that Defendants' infringing uses  
15 diminish the value of Plaintiffs' mark, goodwill and business reputation; and that the nature  
16 and extent of misappropriation of Plaintiffs' mark by Defendants are significant and willful.

17 60. Plaintiffs are informed and believe and on that basis allege that Defendants'  
18 acts were willful, malicious and knowing, and that this is an exceptional case under 15 U.S.C.  
19 §1117.

20 61. Plaintiffs have and will suffer immediate irreparable damage and ongoing  
21 harm to its business, reputation, and goodwill by reasons of Defendants' unlawful acts unless  
22 Defendants are restrained and enjoined, and Plaintiffs are without adequate remedy at law.  
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24 62. Accordingly, Defendants are liable to Plaintiffs for recovery of all of  
25 Defendants' profits, for Plaintiffs' damages, for statutory damages, double damages, and for  
26 attorneys' fees and costs.

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**Count 2: Trademark Infringement of BEAMING WHITE®**

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4 63. Plaintiffs re-allege every paragraph in this Complaint.

5 64. Plaintiffs exclusively own all rights to the BEAMING WHITE® and the  
6 goodwill associated therewith for teeth whitening products.

7 65. Plaintiffs use BEAMING WHITE® to identify Plaintiffs' goods and services  
8 in commerce. Plaintiffs derive substantial value, goodwill, and business reputation from the  
9 exclusive use by Plaintiffs of BEAMING WHITE®. Because of Plaintiffs' exclusive use of  
10 its registered mark and the goodwill and reputation associated with Plaintiffs goods,  
11 Plaintiffs' mark has developed significance in the minds of the public as an identifier of the  
12 source and quality of Plaintiffs' goods and services.

13 66. BEAMING WHITE® is distinctive and/or famous in that among the teeth  
14 whitening products community, it has acquired distinctiveness; the use of the Mark in  
15 connection with teeth whitening products has endured over time; Plaintiffs have used the  
16 Mark for its goods and services in the relevant marketplace; and that there is significant  
17 recognition by consumers in the relevant marketplace of Plaintiffs' Mark.

18 67. Plaintiffs are informed and believe and on that basis allege that Defendants  
19 willfully and maliciously infringed and misappropriated Plaintiffs' trademark in commerce  
20 without permission, directly damaging Plaintiffs reputation and business by knowingly and  
21 maliciously using Plaintiffs' mark in the sale of competing goods, passing Defendants goods  
22 off as Plaintiffs' goods, and diverting sales from Plaintiffs; that Defendants' infringing uses  
23 of Plaintiffs' mark are likely to and/or have caused actual confusion with consumers as to the  
24 source of goods and affiliation of Defendants to Plaintiffs; that Defendants' infringing uses  
25 diminish the value of Plaintiffs' mark, goodwill and business reputation; and that the nature  
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3 and extent of misappropriation of Plaintiffs' mark by Defendants are significant and willful.

4 68. Plaintiffs are informed and believe and on that basis allege that Defendants'  
5 acts were willful, malicious and knowing, and that this is an exceptional case under 15 U.S.C.  
6 §1117.

7 69. Plaintiffs have and will suffer immediate irreparable damage and ongoing  
8 harm to its business, reputation, and goodwill by reasons of Defendants' unlawful acts unless  
9 Defendants are restrained and enjoined, and Plaintiffs are without adequate remedy at law.

10 70. Accordingly, Defendants are liable to Plaintiffs for recovery of all of  
11 Defendants' profits, for Plaintiffs' damages, for statutory damages, double damages and for  
12 attorneys' fees and costs  
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14 **Count 3: Unfair Competition under the Lanham Act**

15 71. Plaintiffs re-allege every paragraph in this Complaint.

16 72. Defendants engaged in unfair competition in violation of Section 43 of the  
17 Lanham Act, 15 U.S.C. § 1125.

18 73. Plaintiffs' Beaming White Marks have become uniquely associated with the  
19 Plaintiffs and has become inherently distinctive in the teeth whitening products marketplace.

20 74. Plaintiffs are informed and believe and on that basis allege that Defendants  
21 have engaged in unfair competition against Plaintiffs in violation of Section 43(a) of the  
22 Lanham Act; that Defendants marketed and market in the same market place and geographic  
23 business center teeth whitening products using the Beaming White Marks in such a way as  
24 to be confusingly similar, and to look like, Plaintiffs, and by that marketing falsely advertised  
25 and advertises and falsely represented and represent Defendants and/or Defendants' goods  
26 and services in a manner which reasonably implies that Defendants either are the same as or  
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are affiliated with Plaintiffs, and/or Defendants' goods and services are those of Plaintiffs,  
and Defendants cause, have caused, and are likely to continue to cause confusion, mistake  
and deception as to the affiliation, attribution, connection or association of Defendants and/or  
Defendants' goods and services with Plaintiffs.

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75. Plaintiffs are informed and believe and on that basis allege that Defendants'  
aforesaid advertising and promotional activities misrepresent the nature, characteristics, and  
qualities of their commercial activities.

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76. Plaintiffs are informed and believe and on that basis allege that Defendants'  
unauthorized uses of Plaintiffs' Beaming White Marks and confusingly similar versions of  
Plaintiffs' Beaming White Marks, are likely to cause, have caused, and will continue to cause  
confusion, mistake, and deception as to the origin of Defendants' goods and services and as  
to the sponsorship, approval, affiliation, or attribution of Defendants or Defendants' goods  
and services.

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77. Defendants have refused to cease and desist from their unlawful activities  
despite Plaintiffs' demand.

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78. Plaintiffs are entitled to compensation to the extent possible for damages,  
general and special, consequential, and incidental, in an amount to be proven at trial, for the  
harm caused by Defendants, and for attorneys' fees, costs, and pre- and post-judgment  
interest.

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79. Plaintiffs are informed and believe and on that basis allege that Defendants'  
acts were willful, malicious and knowing, and that this is an exceptional case under 15 U.S.C.  
§1117.

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80. Plaintiffs have and will suffer immediate irreparable damage and ongoing

harm to its business, reputation, and goodwill by reasons of Defendants' unlawful acts unless Defendants are restrained and enjoined, and Plaintiffs are without adequate remedy at law.

81. Accordingly, Plaintiffs demand an amount of money damages to compensate the Plaintiffs for the harm caused, including but not limited to Defendants' profits, statutory and/or punitive damages, as well as equitable relief, attorneys' fees, costs, and interest.

## **Count 4: Common Law Trademark Infringement and Unfair Competition**

82. Plaintiffs re-allege every paragraph in this Complaint.

83. Plaintiffs are the sole owner of the inherently distinctive Beaming White Marks for teeth whitening products.

84. Plaintiffs are the sole owner of its inherently distinctive Beaming White Marks. Plaintiffs use the Beaming White Marks to identify Plaintiffs' goods and services in commerce. Plaintiffs derive substantial value, goodwill, and business reputation from the exclusive use of Plaintiffs' Beaming White Marks in the relevant marketplace, including Washington, as well as throughout the United States and internationally. Because of Plaintiffs' exclusive use of its Beaming White Marks and the goodwill and reputation associated with Plaintiffs teeth whitening products, Plaintiffs' Beaming White Marks has developed secondary meaning and significance in the minds of the public.

85. Defendants infringed and misappropriated Plaintiffs' Beaming White Marks in commerce without permission. Defendants' infringement is likely to and has caused confusion by the public and diminishes the value of Plaintiff' Beaming White Marks, goodwill and business reputation, dilutes the mark, and tarnishes Plaintiffs' goods and services in the minds of the public by associating Defendants' inferior goods with Plaintiffs' Beaming White Marks.

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3 86. Plaintiffs are informed and believe and on that basis allege that Defendants'  
4 misappropriation of Plaintiffs' labors and expenditures in creating and building Plaintiffs'  
5 Beaming White Marks has caused actual confusion and is likely to continue to cause  
6 confusion and to deceive the public as to the origin of Defendants' goods and services and  
7 business and/or Defendants' relationship to Plaintiffs.

8 87. The acts of the Defendants constitute infringement of Plaintiffs' Beaming  
9 White Marks under common law.

10 88. Plaintiffs are informed and believe and on that basis allege that Defendants  
11 willfully and maliciously infringed in commerce Plaintiffs' Beaming White Marks; that by  
12 its aforesaid conduct Defendants willfully, maliciously, and in bad faith attempted to pass off  
13 their business and/or goods and services as the business and/or goods and services of  
14 Plaintiffs or as an affiliate of Plaintiff, and are attempting to falsely and fraudulently deceive  
15 the marketplace to the substantial detriment of Plaintiffs' business, reputation, and goodwill.

17 89. Plaintiffs are informed and believe and on that basis allege that Defendants'  
18 infringement was and is knowing, willful, and malicious.

19 90. Plaintiffs are entitled to compensation to the extent possible in damages,  
20 general and special, consequential, and incidental, in an amount to be proven at trial, for the  
21 harm caused by Defendant, and for attorneys' fees, costs, and pre- and post-judgment interest.

22 91. Plaintiffs have and will suffer immediate irreparable damage and ongoing  
23 harm to its business, reputation, and goodwill by reasons of Defendants' unlawful acts unless  
24 Defendants are restrained and enjoined, and Plaintiffs are without adequate remedy at law.

26 92. Accordingly, Plaintiffs demand an amount of money damages to compensate  
27 the Plaintiffs for the harm caused, including but not limited to Defendants' profits, statutory

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3 and/or punitive damages, as well as equitable relief, attorneys' fees, costs, and interest.

4 **Count 5: Unfair Competition Under Common Law**

5 93. Plaintiffs re-allege every paragraph in this Complaint.

6 94. Defendants have willfully, maliciously, and in bad faith attempted to pass off  
7 their business and/or goods and services as the business and/or goods and services of  
8 Plaintiffs or as an affiliate of Plaintiffs, and attempt to falsely and fraudulently deceive the  
9 marketplace to the substantial detriment of Plaintiffs' business, reputation, and goodwill.

10 95. Defendants' misappropriation of Plaintiffs' labors and expenditures in  
11 creating and building the distinctive reputation of Plaintiffs are likely to and have caused  
12 actual confusion, and is likely to continue to cause confusion and to deceive the public as to  
13 the origin of Defendants' goods and services and business and/or Defendants' relationship to  
14 Plaintiffs.

16 96. The acts of the Defendants constitute unfair competition against the Plaintiffs  
17 under the common law.

18 97. Plaintiffs are informed and believe and on that basis allege that Defendants'  
19 unlawful acts were and are knowing, willful, and malicious.

20 98. Plaintiffs are entitled to compensation to the extent possible in damages,  
21 general and special, consequential, and incidental, in an amount to be proven at trial, for the  
22 harm caused by Defendant, and for attorneys' fees, costs, and pre- and post-judgment interest.

23 99. Plaintiffs have and will suffer immediate irreparable damage and ongoing  
24 harm to its business, reputation, and goodwill by reasons of Defendants' unlawful acts unless  
25 Defendants are restrained and enjoined, and Plaintiffs are without adequate remedy at law.

27 100. Accordingly, Plaintiffs demand an amount of money damages to compensate

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3 the Plaintiffs for the harm caused, including but not limited to Defendants' profits, statutory  
4 and/or punitive damages, as well as equitable relief, attorneys' fees, costs, and interest.

5 **Count 6: Consumer Protection Act Violations**

6 101. Plaintiffs re-allege every paragraph in this Complaint.  
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8 102. Plaintiffs are informed and believes and on that basis alleges that Defendants  
9 violated Washington's Consumer Protection Act, RCW 19.86 *et seq.*; that Plaintiffs were  
10 proximately and directly harmed by Defendants' violation of Washington's Consumer  
11 Protection Act; and that Defendants' infringement of Plaintiff's Beaming White Intellectual  
12 Property is and should be considered *per se* violations of the Act.

13 103. Plaintiffs are informed and believes and on that basis alleges that Defendants'  
14 misappropriation of Plaintiff's Beaming White Intellectual Property tends to and does  
15 deceive or mislead persons of ordinary caution into the belief that they are dealing with  
16 Plaintiffs when in fact they are dealing with Defendants.

17 104. Plaintiffs are informed and believes and on that basis alleges that Defendants  
18 engaged in a pattern, capable of repetition, of unfair and deceptive practices by  
19 misrepresenting to third parties the attribution and origin and affiliation with Plaintiffs of  
20 Defendants' goods by using a display confusingly similar to Beaming White Intellectual  
21 Property to advertise Defendant's electrical contracting services; and that Defendants  
22 engaged in these acts and representations in trade and commerce, through the mails and wires.

23 105. Plaintiffs are informed and believes and on that basis alleges that Defendants'  
24 deceptive and unfair practices affected the significant public interest in avoiding confusion  
25 of the public, and the significant public interest in the proper attribution of products and  
26 services. Washington has an important interest in ensuring that domestic businesses and

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3 businesses operating in Washington and with Washington residents fully comply with  
4 Washington laws.

5 106. Plaintiffs are entitled to compensation to the extent possible in damages,  
6 general and special, consequential, and incidental, in an amount to be proven at trial, for the  
7 harm caused by Defendants, and for attorneys fees, costs, and pre- and post-judgment interest.

8 107. Moreover, a damage award alone will not make Plaintiffs whole, and Plaintiffs  
9 has and will suffer immediate irreparable damage and harm to its business, reputation, and  
10 goodwill by reasons of Defendants' unlawful acts unless Defendants is restrained and  
11 enjoined, and Plaintiffs are without adequate remedy at law.

12 **Count 7: Copyright Infringement**

13 108. Plaintiffs re-allege every paragraph in this Complaint.

14 109. Plaintiffs maintain a stock of original expressive copyrighted images of their  
15 products, including those image artworks titled "Forever White 3 pens for Groupon",  
16 "Original home kit image for Groupon", and "Forever White pen with box", applications for  
17 all three of which have been duly filed with the Copyright Office for registration and accepted  
18 as received, and will have effective dates of registration on or before October 5, 2016. See  
19 **Exhibit E hereto** incorporated herein by reference.

20 110. Plaintiffs are informed and believes and on that basis alleges that by its  
21 aforesaid conduct Defendants willfully infringed Plaintiffs' copyrighted work by copying and  
22 publishing for their own engorgement, Plaintiffs' image database of Plaintiffs' products; that  
23 Defendants' actions willfully and for profit violated exclusive rights of the Copyright Laws  
24 of the United States; that Plaintiffs owned valid copyright on works which Defendants  
25 violated in acts of improper appropriation.

111. Accordingly, Defendants are liable to Plaintiffs for Defendants' profits, and Defendants should be enjoined to remove and destroy all infringing copies.

112. Due to the willful nature of Defendants' actions, Plaintiffs are entitled to award of Defendants' profits, costs of suit including expert witness fees and costs, and reasonable attorney's fees.

**DEMAND FOR JUDGMENT & PRAYER FOR RELIEF**

WHEREFORE Plaintiffs pray for judgment against the Defendants as follows:

- (a) Granting judgment in favor of Plaintiffs against Defendants on all claims;
- (b) Declaring Plaintiffs' Beaming White Marks valid and infringed by Defendants;
- (c) Enjoining and Restraining Defendants temporarily, preliminarily, and permanently:
  - (1) from directly or indirectly using Plaintiffs' Beaming White Marks or any confusingly similar version or imitation thereof in relation to Defendants' marketing, sale, and/or description of Defendants' business or goods and services;
  - (2) from using Plaintiffs' Beaming White Marks or any confusingly similar version or imitation thereof in any advertising or promotional material, whether printed, verbal, broadcast, electronically transmitted or otherwise;
  - (3) from using Plaintiffs' Beaming White Marks or any confusingly similar version or imitation thereof on or in connection with any Internet address owned or controlled, in whole or in part, by Defendants, Defendants' privies, and/or Defendants' relatives, associates, agents, successors in interest, employees, principals, officers, and shareholders;

(4) from using the Plaintiffs' Beaming White Marks or any confusingly similar version or imitation thereof in any radio, television, or other media advertising;

(5) from using the Plaintiffs' Beaming White Marks or any confusingly similar version or imitation thereof on any Groupon offering;

(6) to remove those portions of Defendants marketing material and website which are similar to Plaintiffs' Beaming White Marks from each and every of Defendants' business addresses, locations, and signage, and from any and all literature, documentation, advertisements, business cards, vehicles, brochures, of any type or kind;

(7) to remove the Plaintiffs' Beaming White Marks and any confusingly similar name or designation from each and every of Defendants' web site pages and whatever web site address Defendants use, and from any and all literature, documentation, advertisements, brochures, of any type or kind;

(8) to remove Plaintiffs' Beaming White Marks from every BBB listing of Defendants' offices and any other confusingly similar listing for Defendants.

(d) Ordering Defendants to identify the location and content of any and all production facilities, stores, inventories, stockpiles or distribution centers containing infringing articles of which they have knowledge, including parts, accessories, designs, logos, prints, electronic files, and any other things, of which Defendants have knowledge, whether owned or controlled by Defendants or any other party;

(e) Ordering impoundment, destruction and verification of such destruction, of any things identified in the preceding paragraph;

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3 (f) Enjoining and Restraining Defendant(s) to write to each and every customer  
4 of Defendants who has ordered teeth whitening products from Defendants, and in such  
5 writing to state that Defendants are not related to, affiliated with, associated with, or  
6 sponsored by Plaintiff, and do not have any relationship with Plaintiff, that Defendants'  
7 goods and services are not those of Plaintiff, and further to provide the address and phone  
8 number of Plaintiffs to each customer, and finally to return to the Court with a copy to  
9 Plaintiffs' attorney of proof of compliance with this Order within ninety (90) days of entry  
10 thereof;

11 (g) Ordering Defendants to provide the names, mailing addresses, phone  
12 numbers, and e-mails of all customers that purchased infringing products;

13 (h) Enjoining and Restraining Defendants temporarily, preliminarily, and  
14 permanently, from further violations of the Lanham Act and the Copyright Act;

15 (i) Ordering an Accounting and Disgorgement of Defendants' profits made while  
16 using the Plaintiffs' Beaming White Marks to market, promote, and/or sell Defendants'  
17 products, whether directly or through other parties, such Accounting to include tracing the  
18 monies and property received by Defendants to their real and personal property and bank and  
19 brokerage accounts, and Disgorgement thereof;

20 (j) Awarding actual, general and specific, consequential and incidental, damages  
21 against Defendants, jointly and severally, in an amount to be determined at trial;

22 (k) Awarding exemplary, punitive, statutory, treble damages to Plaintiffs against  
23 Defendants, jointly and severally;

24 (l) Declaring Defendants act to have been willful and malicious injury(ies) to  
25 Plaintiffs.

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3 (m) Declaring this to be an exceptional case within 15 U.S.C. § 1117;  
4 (n) Awarding Plaintiffs' their reasonable attorneys fees and costs, including costs  
5 for experts, pursuant to State and Federal law;  
6 (o) Awarding Pre- and post- judgment interest; and  
7 (p) Entering such other and further relief as the Court deems appropriate.

8 **TRIAL BY JURY DEMAND**

9 Plaintiffs hereby demand trial by jury on all claims and issues so triable.  
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11 DATED October 7, 2016

/s/ Kurt M. Rylander

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/s/ Mark E. Beatty

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